IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 638/2002
SMT. NAJIRAN & ANR. Vs. MOHAMMAD ZARIF

DATE: 31.01.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Kapil Mathur for the petitioners.

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This revision petition under Section 397 r/w Section 401 Cr.P.C. is preferred by the petitioners against the order dated 20.04.2002 passed by the Family Court, Ajmer in Criminal Case No. 24/2001, whereby the Family Court has dismissed the application of the petitioners moved under Section 125 Cr.P.C. on the ground that respondent offered a written 'Talaqnama' dated 27.02.97 and as per the written 'Talaqnama' which was sent to the petitioner through registered post, the application filed by the petitioners under Section 125 Cr.P.C. has been rejected.

I have considered the rival submissions of the respective parties and carefully perused the impugned order dated 20.04.2002 passed by the Family Court, Ajmer.

I have also gone through the judgment rendered by the Hon'ble Supreme Court in the case of ***Danial Latifi and another Vs. Union of India, reported in***

(2001) 7 SCC 740, wherein in head note 'G', the Hon'ble Supreme Court has observed as under:-

> "G. Muslim Law- Divorce and Maintenance- Held, it is difficult to perceive that Muslim law would pass on the responsibility of providing monetary compensation to a divorced woman to persons unconnected with the matrimonial life, such as the heirs, likely to inherit her property or the Wakf Boards- Monetary compensation is anyway a small solace in relation to the loss a divorced woman undergoes as a direct consequence of the divorce an is universally recognised by persons belonging to all religions as an aspect of basic human rights, gender and social justice- Solution should be adjudged on consideration other than religion or religious faith or beliefs or national, sectarian, racial or communal constraints."

Hon'ble the Supreme Court in the case of ***Shamim Ara Vs. State of U.P. And another, reported in AIR 2002 SC 3551,*** has held that plea of previous divorce taken by husband in written statement in proceedings initiated by wife for maintenance- Cannot at all be treated as pronouncement of "Talaq" by husband on wife on date of filing of written statement in Court followed by delivery of copy thereof to wife. Therefore, 'Talaq' as ordained by Holy Quaran is (i) that 'talaq' must be for a reasonable cause; and (ii) that must be preceded by an attempt of reconciliation between her husband and the wife by two arbiters, one chosen by the wife from her family and the other by the

husband from his- If their attempts fails, 'talaq' may be effected.

Applying the ratio decided by the Hon'ble Supreme Court in the case of ***Shamiv Ara (supra),*** here in the instant case also, written 'Talaqnama' dated 27.02.97 was sent to the petitioner, though the petitioner only accepted that the said 'Talaqnama' received but she was not present at that time. In such circumstances, at least to give effect to 'Talaknama', there must be a reasonable cause and there must be an attempt of reconciliation between her husband and the wife by two arbiters, failing which the written 'Talaqnama' dated 27.02.97 cannot be given effect.

Thus, In view of the ratio decided by the Hon'ble Supreme Court, the impugned order dated 20.04.2002 passed by the Family Court, Ajmer deserves to be quashed and set-aside and the same is hereby quashed and set-aside and the matter is remanded back to the Family Court, Ajmer for fresh adjudication in the light of the aforementioned judgment rendered by the Hon'ble Supreme Court and consider the application from the date of filing of the application under Section 125 Cr.P.C.

The revision petition stands disposed of.

(K.S. RATHORE),J.

/KKC/